

# Exhibit “A”

**HCDistrictclerk.com**

HAZEN, ELIZABETH (INDIVIDUALLY AND AS  
REPRESENTATI vs. ALLSTATE INSURANCE  
COMPANY

10/17/2016

Cause: 201661193      CDI: 7      Court: 334

**DOCUMENTS**

Number	Document	Post Jdgm	Date	Pgs
72203571	DOCKET CONTROL ORDER		10/06/2016	4
72161466	CITATION: ALLSTATE INSURANCE COMPANY :		10/04/2016	2
72151140	Defendant's Original Answer		10/03/2016	6
71994635	Civil Process Pick-Up Form		09/13/2016	1
71858546	Plaintiffs Original Petition And Request For Disclosure		09/12/2016	9
-> 71858547	Civil Case Information Sheet		09/12/2016	1
-> 71858548	Civil Process Request		09/12/2016	1

9/12/2016 3:27:01 PM  
 Chris Daniel - District Clerk  
 Harris County  
 Envelope No: 12650869  
 By: OVALLE, MONICA  
 Filed: 9/12/2016 3:27:01 PM

# CIVIL PROCESS REQUEST

## 2016-611937 Court. 334

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING  
 FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): \_\_\_\_\_

FILE DATE OF MOTION: \_\_\_\_\_  
 Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): Matthew C. Merkle

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

**SERVICE BY (check one):**

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
 Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

\*\*\*\*\*

\*\*\*\*

2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

**SERVICE BY (check one):**

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
 Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

**ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:**

NAME: Cynthia Huerta TEXAS BAR NO./ID NO. 24029402

MAILING ADDRESS: 3200 Travis, 3rd Floor, Houston, Texas 77006

PHONE NUMBER: 713 524-3500 FAX NUMBER: 877 449-4510  
 area code phone number area code fax number

EMAIL ADDRESS: chuerta@smslegal.com

## CIVIL CASE INFORMATION SHEET

9/12/2016 3:27:01 PM  
 Chris Daniel - District Clerk  
 Harris County  
 Envelope No: 12650869  
 By: OVALLE, MONICA  
 Filed: 9/12/2016 3:27:01 PM

CAUSE NUMBER (FOR CLERK USE ONLY):

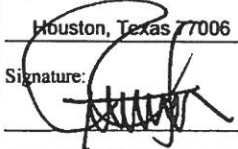
2016-61193 / Court: 334

COURT (FOR CLERK USE ONLY):

STYLED

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: Cynthia Huerta Email: chuerta@smslegal.com Address: 3200 Travis, 3rd Floor City/State/Zip: Houston, Texas 77006 Signature:  Telephone: 713-524-3500 Fax: 877-449-4510 State Bar No: 24029402		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): Defendant(s)/Respondent(s): [Attach additional page as necessary to list all parties]		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: Additional Parties in Child Support Case: Custodial Parent: Non-Custodial Parent: Presumed Father:	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<b>Civil</b>			<b>Family Law</b>		
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:				
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
<b>4. Indicate damages sought (do not select if it is a family law case):</b>					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					



2016-61193 / Court: 334

CAUSE NO.

ELIZABETH HAZEN, INDIVIDUALLY § IN THE DISTRICT COURT OF  
AND AS REPRESENTATIVE OF §  
KENNETH HAZEN §  
  
VS. § HARRIS COUNTY, TEXAS  
§  
ALLSTATE INSURANCE COMPANY §  
§  
§ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ELIZABETH HAZEN, INDIVIDUALLY AND AS REPRESENTATIVE OF KENNETH HAZEN hereinafter referred to as Plaintiff, and file this Original Petition and Request for Disclosure complaining of ALLSTATE INSURANCE COMPANY, hereinafter referred to as Defendant, and in support hereof alleges as follows:

**I. DISCOVERY**

Plaintiff requests discovery be conducted under Level 3 as set forth in Texas Rule of Civil Procedure 190.4.

**II. VENUE**

Plaintiff, ELIZABETH HAZEN, is an individual residing in Lake City, Columbia County, Florida (FLDL: #####050; SSN: ###-##-#479).

Defendant, ALLSTATE INSURANCE COMPANY, is an insurance company licensed to do business in the State of Texas. This Defendant may be served with due process herein by serving its registered agent Matthew C. Merkle, at 9289 Huntington Sq., Suite 200, North Richland Hills, TX 76182-4314. **Please issue a citation for this defendant at this time.**

Venue is proper in Harris County because the incident made the basis of this suit occurred in Harris County, Texas. The Court has personal jurisdiction over ALLSTATE

INSURANCE COMPANY because it is a domestic corporation. The amount in controversy exceeds the minimum requirements of this court.

### III. FACTS

This lawsuit results from a theft and vandalism incident that occurred on or about September 24, 2014, in which Plaintiff's household furniture and personal belongings were stolen and vandalized. The Plaintiff was insured through ALLSTATE INSURANCE COMPANY for this loss. ALLSTATE opened a claim on or about October 1, 2014, and for almost two years failed to resolve Plaintiff's claims in breach of the insurance contract and in violation of the Texas Insurance Code. Further, ALLSTATE INSURANCE COMPANY intentionally and repeatedly misrepresented the policy requirements and policy provisions to Plaintiff, namely that Plaintiff must first recover from United Van Lines for her loss.

ALLSTATE INSURANCE COMPANY issued a policy of insurance, policy 8 29 085890 06/23, which provided for coverage of the Plaintiff's property that covered the dates of June 23, 2014, through June 23, 2015. On the date of the incident made the basis of this suit, ELIZABETH HAZEN was a covered person under the terms of the policy because she is the surviving spouse of Ken Hazen who was the named insured covered by the insurance policy. Plaintiff is therefore entitled to coverage afforded by the insurance policy. Plaintiff is also a "person" under the Texas Insurance Code with standing to bring claims under the Texas Insurance Code.

Plaintiff timely notified Defendant, ALLSTATE INSURANCE COMPANY of their claims. Despite receipt of Plaintiff's claim and Plaintiff providing Defendant with proof of damages that are covered under the policy, Defendant has refused to tender full appropriate payment for damages.

Plaintiff purchased a policy of insurance from Allstate or from Allstate's representatives. It was represented to Plaintiff that this policy of insurance was in full force and effect for the policy period, and that any and all claims made by the insured would be handled in a manner consistent with the guidelines set forth in the Texas Insurance Code.

Plaintiff has made claims for her damages under her ALLSTATE INSURANCE COMPANY Renters Policy to provide for losses sustained from theft and vandalism of her household furniture and personal belongings. Defendant, ALLSTATE INSURANCE COMPANY, has unreasonably and in bad faith failed to request information, failed to adequately investigate the claim, failed to respond to requests for information from the insured, failed to timely evaluate the claim, and failed to timely estimate the claim and enter a fair resolution.

To date, the handling of the claims for damage has resulted in significant problems for Plaintiff. Defendant assigned the claim and despite being given authority and instructions to inspect, adjust, and evaluate the claim, Defendant has again failed to timely estimate the claim and enter a fair settlement. This is unjust in light of Plaintiff's losses in the past and in the future.

#### **IV. CAUSES OF ACTION**

##### **1. Breach of Contract**

Plaintiff sues for coverage under her contract of insurance with ALLSTATE INSURANCE COMPANY. By failing to pay benefits under the policy of insurance, Defendant breached the contract of insurance that existed between it and Plaintiff. As a result, Plaintiff is entitled to recover actual damages, consequential damages and attorney's fees pursuant to §38.001 of the Texas Civil Practice & Remedies Code because of Allstate's breach of contract.



**2. Violation of Texas Deceptive Trade Practices Act**

Plaintiff asserts that the defendant engaged in false, misleading, deceptive acts and practices, as defined by the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code Am §17.41 *et. seq.*, more specifically stated as follows:

§17.46(b)(5): representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not;

§17.46(b)(7): representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another;

§17.46(b)(12): representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve;

§17.50(a)(2): breach of express or implied warranties; and

§17.50(a)(3): that the acts or omissions complained of were unconscionable.

Plaintiff would further show that the ALLSTATE INSURANCE COMPANY's acts and practices, which were the producing cause of Plaintiff's damages, were committed knowingly and intentionally. ALLSTATE INSURANCE COMPANY's fraudulent and deceptive conduct and the resulting damage and loss to Plaintiff have necessitated Plaintiff's retention of the undersigned attorney. Pursuant to Tex. Bus. & Com. Code Ann. § 17.50(d), Plaintiff is entitled to recover attorney's fees that are reasonable and necessary for the preparation and trial of this cause as well as reasonable and necessary fees for appellate services expended in connection with this suit.

**3. Breach of the Duty of Good Faith and Fair Dealing.**

Prior to filing this action, Plaintiff notified ALLSTATE INSURANCE COMPANY of her claim under the Renters Policy and all conditions precedent to obtaining benefits had been



met. Plaintiff provided ALLSTATE INSURANCE COMPANY documentation and information reasonably necessary for the evaluation of her claim. Despite this, ALLSTATE INSURANCE COMPANY refused to pay the value of Plaintiff's claim.

Plaintiff would further show that ALLSTATE INSURANCE COMPANY breached the common law duty of good faith and fair dealing in the following respects:

- a. by denying payments on the full value of Plaintiff's claims when there was no reasonable basis for such denial; and
- b. by withholding payment of the claim when ALLSTATE INSURANCE COMPANY knew or should have known that there was no reasonable basis for doing so.

The evidence in this case establishes that ALLSTATE INSURANCE COMPANY breached their duty to act in good faith and fairly deal with Plaintiff in that ALLSTATE INSURANCE COMPANY has no reasonable basis for refusing to meet their obligations to pay under the Renters Policy. As a consequence, ALLSTATE INSURANCE COMPANY is liable for actual damages, punitive damages and other relief as pled for in this petition.

#### **4. Exemplary Damages**

The conduct of ALLSTATE INSURANCE COMPANY in failing to properly investigate, process, evaluate and engage in good faith settlement negotiations constitutes a conscious disregard of the rights of the Plaintiff. ALLSTATE INSURANCE COMPANY was both grossly negligent and recklessly indifferent to Plaintiff's rights in refusing to pay the underinsured limits on her claims. Indeed, ALLSTATE INSURANCE COMPANY's actions and behavior are such for which the law allows the imposition of exemplary damages under the common law theories of the violation of the duty of good faith and fair dealing, and as a result of the breach of ALLSTATE INSURANCE COMPANY's fiduciary duty to Plaintiff. Accordingly, Plaintiff seeks exemplary damages from ALLSTATE INSURANCE COMPANY.

**5. Violations and Liability under the Texas Insurance Code**

This suit is brought against ALLSTATE INSURANCE COMPANY, in part, pursuant to the Texas Insurance Code. Written notice has been provided in accordance with the Texas Insurance Code.

The evidence will show that ALLSTATE INSURANCE COMPANY participated in unfair claims settlement practices as articulated in TEX. INS. CODE § 541.060. Further, under the holding of Vail v. Texas Farm Bureau Mutual Insurance Company, 754 S.W.2d 129 (Tex. 1988), violations of the Texas Insurance Code and/or rules or regulations issued by The State Board of Insurance create liability under the DTPA, in addition to all penalties and liabilities articulated in the Texas Insurance Code. This liability includes but is not limited to ALLSTATE INSURANCE COMPANY's failure to attempt in good faith to effectuate a prompt fair and equitable settlement of the claim made by Plaintiff. Further, ALLSTATE INSURANCE COMPANY is liable for damages under the provisions of TEX. INS. CODE § 541.

Defendant ALLSTATE INSURANCE COMPANY breached its duty of good faith and fair dealing as provided by the Insurance Code when it unreasonably refused to compensate Plaintiff for her damages incurred as a result of the theft and vandalism. Specifically, ALLSTATE INSURANCE COMPANY failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear. Further, ALLSTATE INSURANCE COMPANY failed to provide promptly to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's refusal to pay the claim. Plaintiff would further show that ALLSTATE INSURANCE COMPANY refused to pay the reasonable value of a claim without conducting a reasonable investigation with respect to the claim. Additionally, Defendant misrepresented the

policy requirements and policy provisions to Plaintiff, namely that our client must first recover from United Van Lines for her loss. Also, ALLSTATE INSURANCE COMPANY had actual awareness of the unfairness of their unreasonable refusal to compensate Plaintiff.

ALLSTATE INSURANCE COMPANY's actions and omissions in connection with its unfair settlement practices were a producing cause of Plaintiff's actual damages. Pursuant to the Insurance Code, Plaintiff is entitled to actual damages, treble damages, costs of court and attorneys fees.

#### **6. Misrepresentation and Fraud**

Plaintiff alleges that the representations made by Defendant ALLSTATE INSURANCE COMPANY concerning coverage under her Renters Policy coverage were misrepresentations and constitute fraud in that the representations were material, were false when made or were made recklessly and that Plaintiff relied on such representations and as a result suffered injuries and damages. Especially in misrepresenting the policy requirements and policy provisions to Plaintiff, namely that Plaintiff must first recover from United Van Lines for her loss.

#### **V. DAMAGES**

As a direct and proximate result of ALLSTATE INSURANCE COMPANY's breach of contract, breach of the duty of good faith and breach of fiduciary duty violations of the Texas Insurance Code and violations of the Deceptive Trade Practices Acts, Plaintiff suffered damages.

Plaintiff seeks to recover damages within the jurisdictional limits of this Court.

Plaintiff also seek damages for her injuries by way of pre-judgment and post-judgment interest payments for all damages he has suffered and that have accrued by the time of judgment.

In accordance with the Texas Rules of Civil Procedure Plaintiff individually seek monetary relief over \$200,000.00 but not more than \$1,000,000.00.



Plaintiff is entitled to the following:

**1. Actual Damages**

The damages suffered by Plaintiff include actual damages in the amount of the fair market value of Plaintiff's household furniture and personal belongings. In addition, ALLSTATE INSURANCE COMPANY's fraudulent and deceptive conduct and the resulting damage and loss to Plaintiff have necessitated Plaintiff's retention of the undersigned attorney.

**2. Statutory Treble Damages**

As a result of Defendant ALLSTATE INSURANCE COMPANY's actions and/or omissions, and/or the acts/omissions of its agents, Plaintiff is entitled to statutory damages as provided for in various statutes, including but not limited to the Texas Insurance Code and the Texas Deceptive Trade Practices Act.

**3. Mental Anguish**

As a result of Defendant ALLSTATE INSURANCE COMPANY's action and/or omissions, and/or the acts/omissions of its agents, Plaintiff has suffered, and is entitled to recover for, mental anguish.

**4. Pain and Suffering**

Plaintiff has incurred physical and mental distress suffered from their injuries.

**5. Attorney's Fees**

**VI. REQUEST FOR DISCLOSURE**

Plaintiff request that Defendant disclose the information or material described and asked in Rule 194.2 (a) - (l) of the Texas Rules of Civil Procedure.



## VII. NOTICE

Plaintiff hereby give notice of intent to utilize items produced in discovery in the trial of this matter and the authenticity of such items is self-proven per the *Texas Rules of Civil Procedure 193.7*

## VIII. JURY DEMAND

Plaintiff demands a trial by jury and has tendered the appropriate fee.

## IX. PRAYER

WHEREFORE, Plaintiff request that Defendant be cited to appear and answer, and that, after trial, Plaintiff have judgment against Defendant for:

1. Actual damages suffered by the Plaintiff;
2. All damages recoverable pursuant to all statutes cited herein, including, but not limited to treble damages;
3. Reasonable attorney's fees;
4. Prejudgment interest as provided by law;
5. Post-judgment interest as provided by law from the date of judgment until paid; and
6. For such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

SCHECHTER, McELWEE, SHAFFER & HARRIS, L.L.P.

/s/ Cynthia Huerta

CYNTHIA HUERTA

TBA # 24029402

3200 Travis, 3<sup>rd</sup> Floor

Houston, Texas 77006

PHONE (713) 524-3500

DIRECT FAX NO. (877) 449-4510

chuerta@smslegal.com

ATTORNEYS FOR PLAINTIFF



**CHRIS DANIEL**  
HARRIS COUNTY DISTRICT CLERK

ENTERED \_\_\_\_\_  
VERIFIED AS

**Civil Process Pick-Up Form**

CAUSE NUMBER: 2016061193

ATY \_\_\_\_\_

CIV ✓

COURT 334

**REQUESTING ATTORNEY/FIRM NOTIFICATION**

ATTORNEY: Huerta Cynthia PH: 713 524 3500

CIVIL PROCESS SERVER: OneStar # 17

PH: 713 779 1400

PERSON NOTIFIED SVC READY: \_\_\_\_\_

DATE: \_\_\_\_\_

Type of Service Document: CHR  
Type of Service Document: \_\_\_\_\_  
Type of Service Document: \_\_\_\_\_  
Type of Service Document: \_\_\_\_\_  
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Tracking Number 73287305  
Tracking Number \_\_\_\_\_  
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Tracking Number \_\_\_\_\_  
Tracking Number \_\_\_\_\_  
Tracking Number \_\_\_\_\_  
Tracking Number \_\_\_\_\_

Process papers prepared by: **Monica Ovalle**

Date: 9/13/16 30 days waiting 10/13/16

Process papers released to:

(PRINT NAME)

(CONTACT NUMBER)

(SIGNATURE)

Process papers released by:

Shariece Richardson

(PRINT NAME)

SRichardson

(SIGNATURE)

Date: 9-21, 2016 Time: 9:30 AM / PM

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging

NO. 2016-61193

ELIZABETH HAZEN, § IN THE DISTRICT COURT OF  
INDIVIDUALLY AND AS §  
REPRESENTATIVE OF KEN HAZEN § HARRIS COUNTY, TEXAS  
VS. §  
ALLSTATE INSURANCE COMPANY § 334TH JUDICIAL DISTRICT

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Allstate Insurance Company, Defendant in the above styled and numbered cause of action, and in response to the complaints filed against it, would respectfully show unto this Honorable Court and Jury as follows:

**I.  
GENERAL DENIAL**

At this time Defendant asserts a general denial to Plaintiff's Original Petition and all amended and/or supplemental petitions, as authorized by Rule 92, Texas Rules of Civil Procedure, and respectfully requests the Court and jury to require Plaintiff to prove the claims, charges and allegations, by a preponderance of the evidence, as required by the Constitution and the laws of the State of Texas.

**II.  
FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by policy exclusions and/or limitations which are listed in the policy made the basis of this suit.

**III.**

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because conditions precedent to Plaintiff's recovery have not occurred. For example, and without limitation, Plaintiff failed to provide proper written notice prior to suit as required by Section 541 of the Texas Insurance Code and by ' 17.50(a) of the Texas Business and Commerce Code (Texas DTPA).

**IV.**

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because some or all of Plaintiff's claims are excluded by the applicable insurance policy.

**V.**

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the injuries, damages, and losses alleged in Plaintiff's pleadings, none being admitted, were proximately caused in whole or in part by the fault or negligence of Plaintiff or others. Accordingly, Plaintiff's claims are barred or must be reduced under the doctrine of contributory or comparative fault.

**VI.**

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for punitive damages are barred because such an award would violate Defendant's due process, equal protection, and other rights under the United States Constitution and the Constitution of the State of Texas.



**VII.**

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff failed to allege conduct warranting imposition of exemplary or punitive damages under applicable state law.

**VIII.**

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant asserts the limitations and restrictions on exemplary damages contained in Chapter 41 of the Texas Civil Practice and Remedies Code.

**IX.**

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to cooperate in the handling of her claim, as required by the policy.

**X.**

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for punitive damages is barred because such an award would violate Defendant's due process, equal protection, and other rights under the United States Constitution and the Constitution of the State of Texas.

**XI.**

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to allege conduct warranting imposition of exemplary or punitive damages under applicable state law.

**XII.**

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are subject to the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, including without limitation the requirement of ' 33.003 thereof that the trier of fact determine the relative responsibility of each claimant, defendant, and responsible third party that may be joined in this suit.

**XIII.**

**TWELTH AFFIRMATIVE DEFENSE**

This Defendant did not issue a policy of insurance which would cover Plaintiff's alleged damages.

**XIV.**

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant hereby gives notice that it intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves its right to amend this answer.

**XV.**

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant asserts the limitations and restrictions contained in Chapter 41 of the Texas Civil Practice and Remedies Code.

COMES NOW, Allstate Insurance Company, Defendant and formally requests a jury trial pursuant to Rule 216 of the Texas Rules of Civil Procedure and tenders the amount of \$40.00 as jury fee.

WHEREFORE, PREMISES CONSIDERED, Defendant, Allstate Insurance Company, prays that the Plaintiff recovers nothing of and from the Defendant by reason of this suit, that Defendant be discharged without delay, with costs of court, and for such other and further relief, both general and special, at law and in equity, to which Defendant may show itself justly entitled, and for which Defendant will in duty bound, forever pray.

Respectfully submitted,

HOPE & CAUSEY, P. C.

*/s/ John M. Causey*

---

John M. Causey  
State Bar No. 04019100  
P. O. Box 3188  
Conroe, Texas 77305-3188  
(936) 441-4673 - Metro  
(936) 441-4674 - Facsimile  
hcdocket@hope-causey.com

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

Pursuant to Rules 21. and 21a. of the Texas Rules of Civil Procedure, I hereby certify that the original of Defendant's Original Answer has been filed with the clerk of the court in writing, and a true and correct copy of Defendant's Original Answer has been delivered to all interested parties on October 3, 2016, correctly addressed to:

Cynthia Huerta  
Schechter McElwee, Shaffer & Harris, L.L.P.  
3200 Travis, 3rd Floor  
Houston, TX 77006

*/s/ John M. Causey*

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John M. Causey

Unofficial Copy Office of Chris Daniel District Clerk



10/4/2016 9:44:31 AM  
Chris Daniel - District Clerk Harris County  
Envelope No. 13042545  
By: DANIELLE JIMENEZ  
Filed: 10/4/2016 9:44:31 AM

CAUSE NO. 201661193

RECEIPT NO.

0.00

CIV

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TR # 73287305

PLAINTIFF: HAZEN, ELIZABETH (INDIVIDUALLY AND AS REPRESENTATIVE)  
vs.  
DEFENDANT: ALLSTATE INSURANCE COMPANY

In The 334th  
Judicial District Court  
of Harris County, Texas  
334TH DISTRICT COURT  
Houston, TX

## CITATION

THE STATE OF TEXAS  
County of Harris

TO: ALLSTATE INSURANCE COMPANY BY SERVING ITS REGISTERED AGENT MATTHEW C  
MERKLE

9289 HUNTINGTON SQ SUITE 200 NORTH RICHLAND HILLS TX 76182 - 4314

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 12th day of September, 2016, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 13th day of September, 2016, under my hand and seal of said Court.

Issued at request of:  
HUERTA, CYNTHIA  
3200 TRAVIS ST 3RD FL  
HOUSTON, TX 77006  
Tel: (713) 524-3500  
Bar No.: 24029402



*Chris Daniel*  
CHRIS DANIEL, District Clerk

Harris County, Texas  
201 Caroline, Houston, Texas 77002  
(P.O. Box 4651, Houston, Texas 77210)

Generated By: OVALLE, MONICA K7U//10482451

## OFFICER/AUTHORIZED PERSON RETURN

Came to hand at \_\_\_\_\_ o'clock \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_,

Executed at (address) \_\_\_\_\_ in

\_\_\_\_\_ County at \_\_\_\_\_ o'clock \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_, by delivering to \_\_\_\_\_ defendant, in person, a

true copy of this Citation together with the accompanying \_\_\_\_\_ copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this \_\_\_\_\_ day of \_\_\_\_\_,

FEE: \$ 115-

\_\_\_\_\_ of \_\_\_\_\_ County, Texas

By \_\_\_\_\_ Deputy

Affiant \_\_\_\_\_

On this day, \_\_\_\_\_, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Notary Public

CAUSE NO. 2016-61193

ELIZABETH HAZEN, INDIVIDUALLY AND AS  
REPRESENTATIVE OF KENNETH HAZEN

Plaintiff,

VS.

ALLSTATE INSURANCE COMPANY

Defendant.

§  
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§  
§

IN THE COURT OF

HARRIS COUNTY, TEXAS

334TH JUDICIAL DISTRICT

AFFIDAVIT OF SERVICE

On this day personally appeared Mitchell Draeger who, being by me duly sworn, deposed and said:

"The following came to hand on Sep 23, 2016, 4:35 pm,

CITATION, PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE,

and was executed at 9289 Huntington Sq. Suite 200, North Richland Hills TX 76182 within the county  
of Tarrant at 12:25 PM on September 26, 2016 by delivering a true copy to  
the within named

ALLSTATE INSURANCE COMPANY BY DELIVERING TO ITS REGISTERED AGENT MATTHEW C MERKLE

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

Mitchell Draeger  
Print Name: Mitchell Draeger  
SCH#: 7995 Exp: 12-31-2016

BEFORE ME, a Notary Public, on this day personally appeared Mitchell Draeger, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON 9-27-2016

Kathy Draeger  
Notary Public, State of Texas





Case No. 201661193

DCORX

HAZEN, ELIZABETH (INDIVIDUALLY  
vs.  
ALLSTATE INSURANCE COMPANY

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IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
334th JUDICIAL DISTRICT

**DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. **05/24/17 JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THIS DOCKET CONTROL ORDER AT THE TIME OF SERVICE.
2. **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6.
  - (a) **06/23/17** Experts for parties seeking affirmative relief.
  - (b) **07/24/17** All other experts.
3. **STATUS CONFERENCE.** Parties shall be prepared to discuss all aspects of the case, including ADR, with the court on this date. TIME:  
Failure to appear will be grounds for dismissal for want of prosecution.
4. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless changed below:
  - (a) Total hours per side for oral depositions.
  - (b) Number of interrogatories that may be served by each party on any other party.
5. **ALTERNATIVE DISPUTE RESOLUTION.**
  - (a) By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the court may sign an ADR order.
  - (b) **11/06/17** ADR conducted pursuant to the agreement of the parties must be completed by this date.
6. **DISCOVERY PERIOD ENDS.** All discovery must be conducted before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
7. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard by oral hearing or submission.
  - (a) If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.
  - (b) **09/22/17** Summary judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) Rule 166a(i) motions may not be heard before this date.
8. **09/22/17 CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
9. **10/20/17 PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. Parties shall be prepared to discuss all aspects of trial with the court on this date.  
TIME: Failure to appear will be grounds for dismissal for want of prosecution.
11. **11/20/17 TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED

JOHN MICHAEL CAUSEY  
PO BOX 3188  
CONROE TX 77305-3188

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4019100

GRANT DORFMAN  
Judge, 334TH DISTRICT COURT  
Date Generated 10/05/2016

THE TRIAL DATE LISTED IN ITEM 11 ON THE FRONT OF THIS ORDER IS THE DATE YOUR TWO-WEEK DOCKET BEGINS. YOU WILL BE CONTACTED BY PHONE BY COURT PERSONNEL WITH AN EXACT DATE AND TIME TO APPEAR ONCE THE CASE IS ASSIGNED TO TRIAL.

FOR ADDITIONAL INFORMATION, COURT PROCEDURES AND A COPY OF THE STANDING ORDER IN LIMINE GOVERNING ALL JURY CASES, PLEASE REFER TO OUR WEBSITE AT [WWW.JUSTEX.NET](http://WWW.JUSTEX.NET)

Unofficial Copy Office of Chris Daniel District Clerk



Case No. 201661193

DCORX

HAZEN, ELIZABETH (INDIVIDUALLY  
vs.  
ALLSTATE INSURANCE COMPANY

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IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
334th JUDICIAL DISTRICT

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SIGNED

CYNTHIA HUERTA  
3200 TRAVIS ST FL 3  
HOUSTON TX 77006-3652

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24029402

GRANT DORFMAN  
Judge, 334TH DISTRICT COURT  
Date Generated 10/05/2016

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